

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ABIGAIL NOEL FISHER, and
RACHEL MULTER MICHALEWICZ,
Plaintiffs,

v.

UNIVERSITY OF TEXAS AT AUSTIN;
et al.,
Defendants.

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CIVIL ACTION NO. 1:08-CV-00263-SS

DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE SAM SPARKS:

Pursuant to Federal Rule of Civil Procedure 56, Defendants University of Texas at Austin ("UT Austin"); Kenneth I. Shine; David B. Prior; William Powers, Jr.; Board of Regents of the University of Texas System, John W. Barnhill, Jr., H. Scott Caven, Jr., James R. Huffines, Janiece Longoria, Colleen McHugh, Robert B. Rowling, James D. Dannenbaum, Paul Foster, Prentice L. Gary; and Bruce Walker file this Cross-Motion for Summary Judgment on all of Plaintiffs' claims and would respectfully show the Court as follows:

I. SUMMARY

Plaintiffs, two applicants denied admission to UT Austin, have sued Defendants alleging that UT Austin's holistic application process, which includes the use of race in the context of an applicant's life experience, violates the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964..

The bases for Defendants' motion, which are more fully set forth in the accompanying Memorandum of Law, filed concurrently with this motion are:

- A. The undisputed facts show that UT Austin has a compelling interest in providing the educational benefits of diversity to its student body; and
- B. The undisputed facts show that UT Austin's admissions policy and process is narrowly tailored to meet that interest.

II. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that this Court grant Defendants' Cross-Motion for Summary Judgment and dismiss all claims brought by Plaintiffs with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ James C. Ho

JAMES C. HO
Solicitor General